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OFFICE OF PETITIONS

In re Application of	:
Pinori et al.	:
Application No. 10/541,795	:
International Filing Date: January 7, 2004	: Decision on Petition
For: Hydroxamic Acid Derivatives Having	: Regarding
Anti-Inflammatory Action	: Republication
Attorney Docket No.: 622-84	:
Pub. No.: US 2006/0100285 A1	:
Pub. Date: May 11, 2006	:

This is a decision on the petition under 37 CFR 1.183 received on July 18, 2006, requesting waiver of the requirement in 37 CFR 1.221(b) that petitioners file the request for corrected publication within two months from the date of the patent application publication.

The petition under 37 CFR 1.183 is dismissed.

Petitioner requests that the application be republished because the patent application publication contains material errors in the chemical formula in the abstract and claim 18. Petitioner argues that the two month time limit in 27 CFR 1.221(b) should be waived to permit republication of the present application. Petitioner states that a request for corrected publication in this application was due on July 11, 2006. Petitioner states that the undersigned received "instructions to investigate the matter on July 3, 2006 when the undersigned was out of the office for the holiday period." Petitioner states that upon realizing the nature of the mistake that a request for corrected publication and the instant petition were filed. Petitioner asserts that since the delay in presenting the request for republication is only three days, such delay is unintentional.

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable."

The request for corrected publication received on July 14, 2006, was not timely filed under 37 CFR 1.221(b).

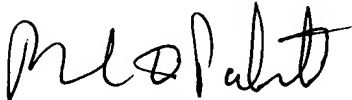
Suspension of the rules under 37 C.F.R. § 1.183 may be granted only "[i]n an extraordinary

situation, when justice requires . . ." The rule places the determination of whether a situation is "extraordinary," and whether justice requires waiver, within the discretion of the Commissioner of Patents and Trademarks. *Nitto Chem. Indus. Co. v. Comer*, 39 USPQ2d 1778, 1780 n.4 (D.D.C. 1994). The facts presented on the record do not establish an extraordinary situation within the meaning of §1.183. Petitioner has not established any special circumstances or equities that would require suspension of the rules in the interests of justice.

There is no adequate showing that petitioner was unable "investigate the matter" earlier or file the request for corrected publication within the two month time limit. Petitioner has simply stated that he received instructions to investigate the matter on July 3, 2006, when he was out of the office for the holiday period. He has not fully explained why it could not have been done earlier or by someone else at the firm. Moreover, petitioner has a suitable remedy on hand for his predicament that does not require the extraordinary remedy of invoking 37 CFR 1.183. That is, petitioner may seek republication relief under the provisions of 37 CFR 1.221(a), which does not have a two month time limit. It is brought to petitioner's attention that the USPTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982). Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable due care and diligence. *United States v. Lockheed Petroleum Servs.*, 709 F.2d 1472, 1475 (Fed. Cir. 1983).

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required \$400 fee for the petition under 37 CFR 1.183 will be charged to petitioner's Deposit Account (14-1140).

Inquiries relating to this communication should be directed to Mark Polutta at (571) 272-7709.



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